

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1034

77-1034

In The
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

UNITED STATES OF AMERICA,

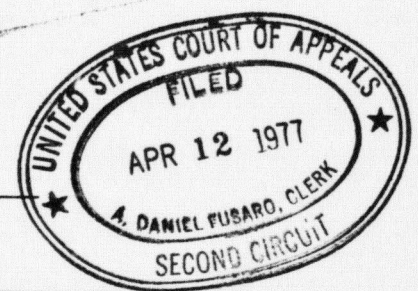
Plaintiff-Appellee,

vs.

DOMINICK LINARELLO,
PASQUALE PICCIRILLO,
MARIA PICCIRILLO and
CARMINE MERCOGLIANO,

Defendant-Appellants.

On Appeal from the United States
District Court for the Southern
District of New York.



APPELLANT'S APPENDIX

HAL MEYERSON
Of Counsel
80 Broad Street
New York, New York 10004

JACOB LEFKOWITZ
Attorney for the Defendant-
Appellant DOMINICK LINARELLO
150 Broadway
New York, New York

PAGINATION AS IN ORIGINAL COPY

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DOMINICK LINABELLO

(LAST FIRST MIDDLE)

76 CR 60

76

608

U.S. TITLE SECTION

OFFENSES CHARGED

ORIGINAL COUNTS

U.S. MAG. CASE NO. 76 M 1

RAIL - OFFICE

10.000 (1),
924, & 2
T-26:5861(e),
5871

Did engage unlawfully in
a business of dealing in firearms;
Did unlawfully transfer a firearm;
failed to make appropriate entries
and maintain records which is required by law.

ANT ☐ Fugitive
Denied ☐ Set ☐ Pers. Re
☐ PSA
Date ☐ L 10% Dope
☒ Surety Bo
☐ Bail Not Made ☐ Collateral
☐ Status Changed (See Docket) ☐ 3rd
Pty Cust. O

II. KEY DATES & INTERVALS

ARREST or	INDICTMENT	ARRAIGNMENT	TRIAL
U.S. Custody Began	High Risk Date	Information <input type="checkbox"/>	Trial Set For
Summons Served	Indict. Waived <input type="checkbox"/>	9/30/76	Voir Dire <input type="checkbox"/>
First Appearance	In Charging District	Superseding <input type="checkbox"/>	Trial Began 11/8/76
9-3-76		Indict/Info <input type="checkbox"/>	Trial Ended 11/18/76
		1st Plea 11	
		Final Plea	
			NG <input type="checkbox"/> G <input type="checkbox"/> NOL <input type="checkbox"/>

SENTENCE
Disposition of Charges 1/13/77
☐ Convicted ☐ On All Chgs
☐ Acquitted ☐ On Lesser Offense(s)
☐ Dismissed ☐ WOP: ☐
☐ On Government Motion

SEARCH WARRANT	DATE	INITIAL/NO	MAGISTRATE	INITIAL/NO	OUTCOME:
Issued			INITIAL APPEARANCE DATE		<input type="checkbox"/> DISMISSED
Returned			PRELIMINARY EXAMINATION OR REMOVAL HEARING	Date Scheduled 9-14-76	<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Summons Issued			<input type="checkbox"/> WAIVED <input type="checkbox"/> NOT WAIVED	Date Held	<input type="checkbox"/> HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
Arrest Warrant Issued	9-2-76	VAC/07AA	INTERVENING INDICTMENT	Tape Number	
COMPLAINT	9-3-76	VAC/07AA			
OFFENSE (In Complaint)	Possession of unregistered firearm. T-26 USC Section 5861(d) and 5871				

U.S. Attorney or Asst.

ATTORNEYS

Defense ☐ CJ ☒ Ret ☐ Waived ☐ Self ☐ None / Other ☐ PD ☐ CDIra M. Gross, Esq. 9-14-76: Jacob P. Lefkowitz
299 B'way, NY150 B'way, (NY NY
10038
WO 4-4945

Appleby

* Show last names and suffix numbers of other defendants on same indictment/information

PASQUALE PICCIRILLO 2; MARIA PICCIRILLO 3; CARMINE MEROCOGLIANO 4

DATE	(DOCUMENT NO.)	PROCEEDINGS	EXCLUDABLE DELAY
9-14-76		Deft. did not appear Ira M. Gross, By applies to be relieved in view of Jacob Lefkowitz, Esq. notification to Gov't that he was retained - case adjourned to September 30, 1976 decision reserved on motion for relief of counsel - Mr. Gross need not appear on 9/24/76.	
9-23-76		Deft. indicted - no number available.	
9/23/76		Before CATOGGIO, J. - Indictment filed.	
9/30/76		Before PLATT, J - Case called. Deft & Counsel present. Deft waives reading of indictment and enters a plea of not guilty. Motions set date set down for 10/18/76 at 9:30 a.m. Defts motion to extend bail limits to include N.Y., N.J. Pa. & Ohio - granted on condition that deft call Pre-Trial services weekly.	
10/14/76		Notice of Pre-Trial motions, Notice of Pre-Trial motion pursuant to Rule 47 F.R. C.R.P. and Rule 41(e) F.R. C. R.P., with defts memorandum of law in support of certain pret-trial motions filed returnable 10/18/76.	

LEITER


 Federal Bureau of Investigation
 U.S. Department of Justice

A. F. Adams
Adm. Serv.
Ment. &
Phys.
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U. S. Department of Justice
Federal Bureau of Investigation
Washington, D. C. 20535

6	Heating pretrial
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F. Transfer to other classes (per P)

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G. Defendant is

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H. Miscellaneous Procedures

[illegible]

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18776 Before PLATT, J. - Case called. Deft & Counsel present. Motion for discovery withdrawn with leave to renew. Defts motion for return - granted on condition indicated in the record. Trial set down for 10/26/76 at 9:30 a.m.

26-76 Affirmation of Jacob P. Lefkowitz filed

26-76 Before Platt, J.- Case Called. James Bernard is ordered substituted for Louis Rosenthal as atty. for Deft. MERCOGLIANO Trial set down for 11-3-76 at 9:30 A.M.

8-76 Before Platt, J.- Case Called. Deft. & Counsel present. Trial ordered and begun. Deft's motion for return of property - granted. Deft's motion to dismiss counts 1, 2 and 3 of the indictment - denied to leave to renew. Deft's motion for severance - denied. Trial held and continued to 11-9-76 at 10:00 A.M.

9-76 Before Platt, J - case called - deft & atty present - defts motion for suppressing Govts. Ex. 11 - denied - trial contd to 11-10-76

10-76 Before Platt, J.- Case Called. Deft. & Counsel present. Trial resumed. Deft's motion to dismiss - denied. Trial continued to 11-11-76 at 10:00 A.M.

11-76 Before Platt, J.- Case Called. Deft. & Counsel present. Trial resumed. Trial continued to 11-15-76 at 10:00 A.M.

5-76 Before Platt, J.- Case Called. Deft & Counsel present. Trial resumed. Deft's. motion for withdrawal of a juror and declaration of a mistrial - denied. Deft's. motion for withdrawal of a juror and declaration of a mistrial denied.. Deft's. motion for withdrawal of a juror and declaration of a mistrial - denied. Deft. Rests. Continued to 11-16-76 at 9:30 A.M.

16-76 Before Platt, J - case called - trial resumed - defts motion for judgment of acquittal and for dismissal denied - trial contd to Nov 17, 1976 at 9:30 am hearing ordered and begun on Govts offer - hearing concluded.

7/76 Before PLATT, J.- Case called. Deft & Counsel present. Trial resumed. Judge charge jurh. Jury retires for deliberations. Jury returns with a verdict of guilty on cts 1 and 3 and disagreement on count 2. Defts motion for a mistrial - denied. Jury is excused until 11/18/76 at 9:30 a.m. for further deliberations. Govts motbn to increase bail for deft to \$50,000 denied. Deft reserves motions. Trial cont. to 11/18/76 at 9:30 a.m.

8/76 Before PLATT, J.- Case called. Deft & Counsel present. Jury resumes deliberations at 9:30 a.m. Jury returns with a verdict of not guilty on count 2. Jury is excused. Motions for deft - two weeks. Bail continued. Trial concluded.

FINE AND RESTITUTION PAYMENTS

[illegible]

DIATT J.

3a

DISTRICT COURT
ET U.S.

DOMINICK LINARELLO

76 608

Vr. Docket No.

V. EXCLUDABLE DE

(a) (b) (c)

PROCEEDINGS (continued)

DATE

(Exclusion No.)

11-19-76 Stenographers transcripts dated 11/8/76, 11/9/76, 11/10/76, 11/11/76, and 11/15/76 filed.

12-10-76 Notice of Motion pursuant to Rule 29(c) & Rule 33 F.R.Cr.P for an order setting aside the verdict and entering judgment of acquittal and for a new trial filed and forwarded to Chambers.

-13-77 Before Platt, J - case called - deft & counsel Jacob Lefkowitz present - defts motion to set aside the verdict is denied - defts motion for a new trial is denied; deft sentenced on each of counts 1 and 2 to imprisonment for 4 years under 18:4205(b)(2) and to pay a fine of \$5,000 on each count for total fine of \$10,000. Execution of sentence stayed pending appeal - fine to be paid within 90 days - bail contd.

1-13-77 Judgment & commitment filed - certified copies to Marshal.

1/17/77 Notice of Appeal filed.

1/17/77 Docket entries and duplicate of Notice of Appeal mailed to the C of A.

2-27-77 Record on appeal certified and mailed to the court of appeals

A TRUE COPY ATTEST
1/21/77
LEWIS G. GIL, CLERK
BY [Signature] DEPUTY CLERK

UNITED STATES DISTRICT COURT 4a
EASTERN DISTRICT OF NEW YORK

77-1034

----- X

UNITED STATES OF AMERICA

-against-

DOMINICK LINARELLO,
PASQUALE PICCIRILLO,
MARIA PICCIRILLO and
CARMINE MERCOGLIANO,

I N D I C T M E N T

Cr. No. 76/608
(T. 18, U.S.C. §5922(a)(1),
923, 924, 2; T. 26, U.S.C.
§55861(e), 5871)

Defendants.

----- X

THE GRAND JURY CHARGES:

COUNT ONE

On or about and between the 13th day of May 1975 and the 3rd day of September 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendants PASQUALE PICCIRILLO, MARIA PICCIRILLO and CARMINE MERCOGLIANO, did knowingly and unlawfully engage in the business of dealing in firearms and ammunition, the defendants PASQUALE PICCIRILLO, MARIA PICCIRILLO and CARMINE MERCOGLIANO not being licensed dealers in firearms and ammunition as required by Title 18, United States Code, Section 923, and during the commission of this offense the above-named defendants were aided and abetted by DOMINICK LINARELLO, a federally licensed gun dealer. (Title 18, United States Code, Sections 922(a)(1), 923, 924 and 2).

COUNT TWO

On or about the 27th day of July 1976, within the Eastern District of New York, the defendants DOMINICK LINARELLO and PASQUALE PICCIRILLO did knowingly and unlawfully transfer a "firearm", as defined by Title 26, United

States Code, Sections 5845(a) and (d), to wit, one single barreled, 12 gauge, J.C. Higgins shotgun, Model 583-1100, containing no serial number, having a barrel length of approximately 11 inches and an overall length of approximately 27 1/2 inches, said sawed-off shotgun not having been registered to the defendants DOMINICK LINARELLO and PASQUALE PICCIRILLO in the National Firearms Registration and Transfer Record. (Title 26, United States Code, Sections 5861(e) and 5871 and Title 18, United States Code, Section 2).

COUNT THREE

On or about and between the 5th day of April 1976 and the 3rd day of September 1976, both dates being approximate and inclusive, within the Eastern District of New York, the defendant DOMINICK LINARELLO, a federally licensed gun dealer, knowingly and unlawfully did fail to make appropriate entries and properly maintain records which he is required to keep pursuant to Title 18, United States Code, Section 923 and the rules and regulations promulgated thereunder. (Title 18, United States Code, Sections 922(a) and 924).

A TRUE BILL

FOREMAN

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1 A On the way to Pasquale's residence we happened
2 to see the store on 358 Crescent Street, the door was open.
3 We stopped in. Carmine was in there and Special Agent
4 Zezima had a conversation with Carmine concerning the
5 possibility --

6 MR. BERNARD: Objection.

7 THE COURT: Go ahead.

8 A Concerning the possibility of Carmine coming up
9 with some guns.

10 Carmine gave Special Agent Zezima a phone number
11 and told him to be in touch that night and he would have more
12 facts concerning guns at that time.

13 Q That conversation was in English, of course?

14 A Yes, it was.

15 Q You met Pasquale Piccirillo later?

16 A Right after the Carmine meeting, the house is
17 approximately a block and a quarter away. We just went right
18 over to the house as prearranged.

19 Q Continue?

20 A This was to buy a gun with a silencer for \$400.

21 Pasquale Piccirillo explained to us that we
22 would again have to drive him to Fulton Street. The person
23 that he was going to buy it from didn't want to meet anybody
24 anymore. That is exactly what he said.

25 We took him to Fulton Street. We parked on

9 1
2 Fulton and Elton. Pasquale got out of the car with \$400 that
3 we had given him and he entered the gun shop.

4 A short while later he came out, came over to
5 the car, and told us that his man had already sold it and got
6 \$600 for it.

7 MR. LEFKOWITZ: Your Honor, on behalf of
8 Linarillo, I object to all this testimony. It's not
9 in the presence of my client.

10 THE COURT: In the presence of Mr. Piccirillo,
11 it's going to be admitted against him in any event.
12 I will leave it to the jury to determine who in fact
13 Mr. Piccirillo was dealing with in the shop on that
14 day.

15 Bear in mind there is no identification of Mr.
16 Linarillo by name as the person with whom they were
17 dealing.

18 MR. LEFKOWITZ: Your Honor, my objection is not
19 as to the jury's province to determine who they were
20 dealing with, my objection is to the rank hearsay
21 conversation that has been produced here.

22 THE COURT: I understand the ramifications of
23 it. I will allow the conversation provided that the
24 jury is satisfied beyond a reasonable doubt that this
25 transaction that occurred on August 19, 1976, was with

Pitta - direct

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sustained objection to Mr. Lefkowitz' objection. What I am asking your Honor to do is charge the jury that if they find there was a joint venture and if they find that Dominic Linarillo, by independent evidence, joined that joint venture, they may consider the statements of the other joint venturers against him.

THE COURT: I will consider it.

MR. APPLEBY: I ask your Honor to look at the charge.

THE COURT: I'm not going to give it in that form, anyway.

MR. LEFKOWITZ: I will state my position at the proper time when charges are in order. I hope to prepare some charges at a later time.

THE COURT: I think I have given adequate instructions on this.

(The following took place in open court.)

MR. APPLEBY: I wonder if the Court Reporter can read back the last bit of testimony?

(Whereupon the last answer was read by the Reporter.)

Q Did he indicate who his man was?

A Yes.

Q Who?

Pitta - direct

A Dominic Inarillo.

Q Continue, please.

A We got in the car and were ready to go back to the residence and he mentioned he had another guy who was able to supply three handguns, but wanted \$300 apiece. Excuse me, \$200 apiece..

We told him that this was a little expensive, especially if we don't see them. If we didn't pay up front, we couldn't get them, and there were not returns.

We were driving back to the residence and he thought about it and told us to return to the area of Fulton Street again.

MR. LEFKOWITZ: I move to strike "he thought about it."

THE COURT: Yes.

MR. SOMMA: Your Honor, the witness is talking too fast for the interpreter.

THE COURT: For me, too.

go ahead.

A Pasquale requested that we return to the Fulton Street area.

He got out of the car, re-entered the Fulton Gun Shop, came out in a short while and told us that the only way we can do the deal is if we brought the guns with the money

Pitta - direct

229

5 1
2 were you working in an undercover capacity with Agent Zezima?

3 A Yes.

4 Q Where?

5 A At the residence of Pasquale and Marie Piccirillo.

6 Q What happened?

7 A We went to the residence of Pasquale and
8 Marie Piccirillo as pre-arranged, to buy two guns.

9 When we arrived, Pasquale stated that we had to
10 take him to the area of Fulton Street again.

11 He said the cost would be \$380 in toto, and he
12 needed the money out front.

13 We gave him the \$380 and drove him -- At this
14 time he didn't want us to go as close as we were to the store
15 on all the other occasions. He wanted us to park at Ashford
16 and Fulton. We did.

17 He got out of the car and walked, walked east.
18 We got out of the car and walked across the street to the north
19 side of the street and paralleled him.

20 I observed him walking to the gun shop. I took
21 a position across the street from the Fulton Gun Shop.

22 About a short while later he came out with
23 Dominic Linarillo. They had a very short conversation,
24 exchanged greetings, and he returned to the car.

25 Q Pasquale?

A Pasquale Piccirillo returned to the car.

In the car, he showed us the two guns and stated these were the guns he got from Dominic Linarillo.

A short conversation ensued about more guns in the future from Dominic Linarillo.

Then I signalled the covering team to come in and secure the arrest of Pasquale Piccirillo pursuant to a federal arrest warrant.

Q I show you Government's exhibits 9 and 10 in evidence and ask you whether you recognize it?

A Yes, these are the two guns bought from Pasquale Piccirillo on September 2nd. My initials and tags are on them.

MR. APPLEBY: Your Honor, at this time I offer Government's exhibits 3, 4, 5, 6, 7, 8, 9, 10 against the defendant Dominic Linarillo.

MR. LEFKOWITZ: Your Honor, there is no evidence that has been adduced --

THE COURT: Let's not argue in the presence of the jury. We will take a five-minute recess.

I will come back before we bring the jury back. That's why we will have a little longer recess, ladies and gentlemen.

I will discuss the question of which if any of

1
2
3 Now, with respect to the question of
4 knowledge, knowledge and intent ordinarily may not
5 be proved directly because there is no way of
6 fathoming or scrutinizing the operations of the
7 human mind but you may infer a defendant's knowledge
8 and intent from the surrounding circumstances. You
9 may consider any statement made and done or omitted
10 by a defendant and all of the facts and circumstances
11 in evidence which indicate his or her state of
12 mind.

13 Now, there are certain statements that
14 you may recall were made during the course of this
15 trial by the Government agents and perhaps one or
16 two others where there were arguments as to whether
17 or not they were hearsay or whether they should have
18 been admissible.

19 For example, the Government agents
20 testified that the defendant Pasquale Piccirillo
21 described to them certain acts which he alleged
22 had been done by the defendant Linarillo. My
23 recollection is, and I caution you that it is your
24 recollection not my recollection which controls,
25 that, for example, one or more of the descriptions
of acts by Mr. Linarillo was given following Mr.

1
2 Piccirillo's alleged trips alone into the Fulton
3 Gun Shop and his re-emergence therefrom with certain
4 of the guns which were received in evidence, namely,
5 Exhibits 3, 4, 7, 8, 9 and 10. Now, ordinarily,
6 this testimony by the Government agents with respect
7 to the acts of Mr. Linarillo would not be admissible
8 against Mr. Linarillo since the descriptions are
9 hearsay, not having been made by Mr. Piccirillo in
10 the presence of Mr. Linarillo and the acts themselves
11 were not committed in the presence of the Government
12 witness or agent who testified.

13 However, you may in any event consider
14 the descriptions against the defendant Piccirillo
15 and you may also consider the descriptions against
16 the defendant Linarillo on Count One if and only if
17 you find beyond a reasonable doubt that at the time
18 the acts so described were allegedly committed, the
19 defendant Linarillo was an aider or abettor, i.e.,
20 an active participant with the defendants Piccirillo's
21 in their alleged business as firearm or ammunition
22 dealers without a license; otherwise, you must
23 disregard such hearsay descriptions and the acts
24 themselves entirely as against said defendant
25 Linarillo.

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2 Similarly with respect to the guns
3 which Mr. Piccirillo allegedly brought out of the
4 gun shop by himself, namely Exhibits 3, 4, 7, 8, 9
5 and 10, while they may be considered in any event
6 as evidence against Mr. Piccirillo, again they may
7 only be received as evidence against defendant
8 Linarillo if you find beyond a reasonable doubt that
9 at the time they were allegedly acquired, the
10 defendant Linarillo was an aider or abettor, i.e.,
11 an active participant with the Piccirillo's in their
12 alleged business as firearm and ammunition dealers
13 without a license; otherwise, you must disregard
14 such guns entirely as against said defendant
15 Linarillo.

16 Now with respect to Exhibit 11, that
17 is the P38 revolver which Agent Pita said he
18 purchased from the defendant Linarillo on July 27,
19 1976, along with the sawed off shotgun, Exhibit 12,
20 there is no charge against the defendant Linarillo
21 in Counts One, Two, or Three that he sold such a
22 revolver. Count One contains the charges of engag-
23 ing in business as firearm and ammunition dealers
24 against the defendants Piccirillo's and Mercogliano
25 and Count Two only charges the defendants

1
2 Piccirillo and Linarillo with unlawfully selling the
3 sawed off shotgun. However, as I told you during
4 the trial, the alleged sale of the revolver may, if
5 you find beyond a reasonable doubt, that the same
6 was unlawfully sold by the defendants Linarillo and
7 Piccirillo on said date, be used for limited purposes
8 and limited purposes only, namely to prove knowledge,
9 intent, identity, common scheme or plan or absence
10 of mistake or accident or other innocent reason on
11 the part of the defendants Piccirillo and Linarillo
12 in the acts charged against them in the counts of
13 the indictment against them subject to the following
14 limitations:

15 The fact that an accused may have
16 committed another offense at some time is not any
17 evidence or proof whatever that, at an earlier time,
18 the accused committed the offense charged in the
19 indictment, even though both offenses are of a like
20 nature. Evidence through an alleged earlier simul-
21 taneous or later offense of a like nature may not
22 therefore be considered by the jury in determining
23 whether the accused did the act charged in the
24 indictment. Nor may such evidence be considered for
25 any other purpose whatever, unless the jury first

1
2 find that the other evidence in the case, standing
3 alone, establishes beyond a reasonable doubt that
4 the accused did the act charged in the indictment,
5 leaving aside only the question of whether the
6 accused did it knowingly, intentionally and willfully,
7 or that it was a part of a common scheme and plan
8 and not because of accident, mistake or other
9 innocent reason.

10 If the jury should find beyond a
11 reasonable doubt from the other evidence in the case
12 that the accused did the act or acts charged in the
13 indictment, then the jury may consider evidence as
14 to an alleged earlier simultaneous or later offense,
15 i.e., in this case, the sale of the P38 revolver.
16 I should say alleged sale of the P38 revolver or in
17 like nature. In determining motive, the state of
18 mind, knowledge or intent, identity, whether it was
19 a common scheme or plan or such with which the
20 accused did the act charged in the indictment and
21 where all the elements of an alleged earlier or
22 later offense of a like nature are established by
23 the evidence which is clear and conclusive, the
24 jury may, but is not obliged to, draw the inference
25 and find that in doing the act charged in the indictment,

1
2 dealer and that charge says all of those activities
3 is engagement in the aiding and abetting which
4 took place between May 13, '75 and September 3 ,
5 1976.

6 Nowhere in that charge is there a claim that
7 the Government or a charge by the Government or the
8 Grand Jury that Dominick Linarillo made a direct
9 sale of any weapons, it is merely that he aided and
10 abetted the others in making sales.

11 In Count 2, the charge is that Dominick Linarillo
12 and Pasquale Piccirillo did knowingly and unlawfully
13 transfer a firearm, namely a sawed off shotgun, which
14 had not been registered to them in accordance with
15 the National Firearms Registration and Transfer
16 Law.

17 That firearm, I take it and I assume, is what
18 has now been offered as Government's Exhibit 12,
19 that sawed off shotgun has been offered as Government's
20 Exhibit 12 for identification, has now been offered
21 into evidence.

22 Again there is no charge in that count that
23 the two defendants sold a P-38 revolver which has
24 been marked Government's Exhibit 11.

25 In Count 3, the charge is that between the

1
2 dates of April 5, '76 and September 3, 1976, the
3 defendant Dominick Linarillo, a federally licensed
4 gun dealer knowingly and unlawfully did fail to
5 make a properly maintained record which he is
6 required to do under the statutes and regulations.

7 The Government now says that they are going
8 to show in connection with the P-38 revolver that that
9 that there were no appropriate records made with
10 respect to that alleged sale.

11 I am admitting it under Count 3, this is
12 Exhibit 11 for that purpose, Government's Exhibit 12,
13 the sawed off shotgun goes in under Count 2, of
14 course. Both the Government, the Government is
15 offering both the revolver and the shotgun as evidence
16 of what we call similar act which occurred prior to
17 simultaneous with or subsequent to the acts charged
18 in the indictment.

19 At least temporarily I am going to admit it
20 for such purposes under a rule which reads: Rule
21 404 evidence of other crimes, wrongs or acts not
22 admissible to prove the character of a person in order
23 to show that he acted in conformity therewith. It
24 may however be admissible for other purposes such as
25 proof of motive opportunity, intent preparation,

Pitta-direct

214

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2
3 plan knowledge identity or absence of mistake or
4 accident.

5 For those purposes I am going to admit them,
6 allow them to be admitted for the other counts as
7 well. However, I will give you full instructions with
8 respect to these exhibits and the question of their
9 proof for knowledge intent and so forth at the
10 conclusion of the case that they are being offered
11 for limited purposes for those two counts and I
12 will give you full instructions at the end of the
13 case with respect thereto.

14 So they will be received with those cautionary
15 instructions at this juncture.

16 MR.APPLEBY: Thank you, your Honor.

17 THE CLERK: Government's Exhibits 11 and 12
18 marked in evidence as limited by the Court.

19 (So marked)

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(Continued on next page.)

Pitta-direct

203

1
2 a short conversation he consented. He took me to the Fulton
3 Gun Shop, myself, Pasquale Piccirillo and Special Agent
4 Zezima got into the undercover vehicle and went to the
5 Fulton Gun Shop.

6 I got out with Pasquale Piccirillo and in
7 front of the pizza shop- gun store that vicinity right
8 there was Dominick Linarillo. I was introduced to Dominick
9 Linarillo by Pasquale Piccirillo as his source of supply.

10 Pasquale explained to Dominick --

11 MR. LEFKOWITZ: Your Honor, I object and move
12 to strike his source of supply.

13 THE COURT: Is that what he said?

14 THE WITNESS: He said he was his source of
15 supply.

16 THE COURT: Overruled.

17 BY MR. APPLEBY:

18 Q Continue, please.

19 A He then said to me, explained to Dominick I
20 was the man he was dealing with over this prolonged time
21 I was good people and could be trusted and appreciated if
22 he would deal with me. He stated I would still take care
23 of him. Meaning Pasquale Piccirillo, he wouldn't get cut out
24 of any deal but it would be better to be a face-to-face deal
25 I would know if I liked something or not.

Pitta-direct

220

1
2 it was enough. We had to give \$225 plus \$25 for the introduc-
3 tion for the first time we met the source of supply.
4

5 I looked at the gun. I mentioned to Pasquale
6 that it was a little rusty. He said if we have any questions
7 why don't we go see Dominick. "I got it from him, it's his
8 gun," he said.

9 I said, "Fine."

10 Myself and Pasquale Piccirillo went to the
11 Fulton Gun Shop. We arrived at the Fulton Gun Shop. Dominick
12 Linarillo was in the rear of the store. We got to the rear of
13 the store by asking someone in the pizza shop "Is Dominick
14 around?" Someone said, "Yes, he is in the back."

15 We went through the pizza store into the Fulton
16 Gun Shop and we were allowed to go through by this person.

17 In the back Pasquale showed him the gun and
18 mentioned that he doesn't like the gun it is rusty. He said
19 that there is nothing wrong, and "if he don't want it he don't
20 have to take it, I have other customers."

21 He mentioned to me too bad I wasn't there a few
22 days ahead of time, he just sold some.

23 I told him I would possibly be by again.

24 We left and went back to the residence.

Q Continue?

A On the way back to the residence, Pasqu

Pitta-cross-Lefkowitz

1 A Would you like an example?

2 THE COURT: I don't know what he means by "what
3 kind of broken English".

4 THE WITNESS: I don't know.

5 THE COURT: There is only one kind of broken
6 English. Broken English.

7 O Tell us what you mean?

8 A Would you like an example?

9 O Wait until I -- you mind if I question? You
10 tell me what you mean by broken English?

11 Q What do I mean by broken English? When dealing
12 with Pasquale Piccirillo he would speak to Special Agent
13 Zezina in Italian. I would be able to stop the conversation
14 and ask Pasquale, "how many guns, how many?" And he would go
15 "one" and I would say "one gun?" He'd say "one gun". And this
16 is the type of conversation I would have with Pasquale.

17 O And --

18 A Can I just stop for a minute? I am not finished
19 yet.

20 O Go ahead. I have lots of time.

21 A Also, when I would stop Special Agent Zezina
22 and say, "What did you say?", he would translate to me in
23 Italian and then go back and tell him what he told me and
24 he would nod, "yes".

1
2 dealer and that charge says all of those activities
3 is engagement in the aiding and abetting which
4 took place between May 13, '75 and September 3 ,
5 1976.

6 Nowhere in that charge is there a claim that
7 the Government or a charge by the Government or the
8 Grand Jury that Dominick Linarillo made a direct
9 sale of any weapons, it is merely that he aided and
10 abetted the others in making sales.

11 In Count 2, the charge is that Dominick Linarillo
12 and Pasquale Piccirillo did knowingly and unlawfully
13 transfer a firearm, namely a sawed off shotgun, which
14 had not been registered to them in accordance with
15 the National Firearms Registration and Transfer
16 Law.

17 That firearm, I take it and I assume, is what
18 has now been offered as Government's Exhibit 12,
19 that sawed off shotgun has been offered as Government's
20 Exhibit 12 for identification, has now been offered
21 into evidence.

22 Again there is no charge in that count that
23 the two defendants sold a P-38 revolver which has
24 been marked Government's Exhibit 11.

25 In Count 3, the charge is that between the

Pitta-direct

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dates of April 5, '76 and September 3, 1976, the defendant Dominick Linarillo, a federally licensed gun dealer knowingly and unlawfully did fail to make a properly maintained record which he is required to do under the statutes and regulations.

The Government now says that they are going to show in connection with the P-38 revolver that that that there were no appropriate records made with respect to that alleged sale.

I am admitting it under Count 3, this is Exhibit 11 for that purpose, Government's Exhibit 12, the sawed off shotgun goes in under Count 2, of course. Both the Government, the Government is offering both the revolver and the shotgun as evidence of what we call similar act which occurred prior to simultaneous with or subsequent to the acts charged in the indictment.

At least temporarily I am going to admit it for such purposes under a rule which reads: Rule 404 evidence of other crimes, wrongs or acts not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may however be admissible for other purposes such as proof of motive opportunity, intent preparation,

1
2 plan knowledge identity or absence of mistake or
3 accident.

4 For those purposes I am going to admit them,
5 allow them to be admitted for the other counts as
6 well. However, I will give you full instructions with
7 respect to these exhibits and the question of their
8 proof for knowledge intent and so forth at the
9 conclusion of the case that they are being offered
10 for limited purposes for those two counts and I
11 will give you full instructions at the end of the
12 case with respect thereto.

13 So they will be received with those cautionary
14 instructions at this juncture.

15 MR. APPLEBY: Thank you, your Honor.

16 THE CLERK: Government's Exhibits 11 and 12
17 marked in evidence as limited by the Court.

18 (So marked)

19 (Continued on next page.)
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Similarly with respect to the guns which Mr. Piccirillo allegedly brought out of the gun shop by himself, namely Exhibits 3, 4, 7, 8, 9 and 10, while they may be considered in any event as evidence against Mr. Piccirillo, again they may only be received as evidence against defendant Linarillo if you find beyond a reasonable doubt that at the time they were allegedly acquired, the defendant Linarillo was an aider or abettor, i.e., an active participant with the Piccirillo's in their alleged business as firearm and ammunition dealers without a license; otherwise, you must disregard such guns entirely as against said defendant Linarillo.

Now with respect to Exhibit 11, that is the P38 revolver which Agent Pita said he purchased from the defendant Linarillo on July 27, 1976, along with the sawed off shotgun, Exhibit 12, there is no charge against the defendant Linarillo in Counts One, Two, or Three that he sold such a revolver. Count One contains the charges of engaging in business as firearm and ammunition dealers against the defendants Piccirillo's and Mercogliano and Count Two only charges the defendants

27a

Piccirillo and Linarillo with unlawfully selling the sawed off shotgun. However, as I told you during the trial, the alleged sale of the revolver may, if you find beyond a reasonable doubt, that the same was unlawfully sold by the defendants Linarillo and Piccirillo on said date, be used for limited purposes and limited purposes only, namely to prove knowledge, intent, identity, common scheme or plan or absence of mistake or accident or other innocent reason on the part of the defendants Piccirillo and Linarillo in the acts charged against them in the counts of the indictment against them subject to the following limitations:

The fact that an accused may have committed another offense at some time is not any evidence or proof whatever that, at an earlier time, the accused committed the offense charged in the indictment, even though both offenses are of a like nature. Evidence through an alleged earlier simultaneous or later offense of a like nature may not therefore be considered by the jury in determining whether the accused did the act charged in the indictment. Nor may such evidence be considered for any other purpose whatever, unless the jury first

2 find that the ^{28a} other evidence in the case, standing
3 alone, establishes beyond a reasonable doubt that
4 the accused did the act charged in the indictment,
5 leaving aside only the question of whether the
6 accused did it knowingly, intentionally and willfully,
7 or that it was a part of a common scheme and plan
8 and not because of accident, mistake or other
9 innocent reason.

10 If the jury should find beyond a
11 reasonable doubt from the other evidence in the case
12 that the accused did the act or acts charged in the
13 indictment, then the jury may consider evidence as
14 to an alleged earlier simultaneous or later offense,
15 i.e., in this case, the sale of the P38 revolver.
16 I should say alleged sale of the P38 revolver or in
17 like nature. In determining motive, the state of
18 mind, knowledge or intent, identity, whether it was
19 a common scheme or plan or such with which the
20 accused did the act charged in the indictment and
21 where all the elements of an alleged earlier or
22 later offense of a like nature are established by
23 the evidence which is clear and conclusive, the
24 jury may, but is not obliged to, draw the inference
25 and find that in doing the act charged in the indictment.

29a

the accused acted willfully, knowingly and with specific intent and not because of mistake or accident or other innocent reason.

Statements and arguments of counsel are not evidence in the case, unless made as an admission or stipulation of fact. When the attorneys on both sides stipulate or agree as to the existence of a fact, you must, unless otherwise instructed, accept the stipulation as evidence and regard that fact as proved.

Unless you are otherwise instructed, the evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them, and all exhibits received in evidence, regardless of who may have produced them and all facts which may have been admitted or stipulated and all facts and events which may have been judicially noticed and all applicable presumptions stated in these instructions.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court must be entirely disregarded. Evidence does include however what is brought out from the witnesses on cross-

14

Erickson - direct

353

1 acquired the firearm and to whom he disposed of it.

2 Q Must the books and records be on the business
3 premises?

4 A Absolutely.

5 Q How much time does a dealer have to record
6 acquisitions and disposition of the firearms?

7 A I believe it is the close of the following
8 business day.

9 Q Does a gunsmith also need to enter in his
10 bound book the firearms transactions that he makes?

11 A Anything that isn't a temporary repair has
12 to be entered in his acquisition and disposition book.

13 If a customer waits for the repair it is
14 not required to be entered in the book.

15 Q What is a Form 4473?

16 A That's the Federal form relative to acquiring
17 a fire arm. It describes the firearm in full. The
18 party has to attest buying the gun, ever having renounced their
19 citizenship, no prior felonies, don't use narcotics.

20 Then they have to furnish identification they
21 are residents of the State where the transaction is taking
22 place. They sign the certificate and the certificate
23 spells out in full exactly what the firearm they are
24 purchasing is.
25

1
2 BY MR. LEFKOWITZ: (Cont'd.)

3 Q I know he's obliged to put it in the book, my
4 question was, doesn't he have some span of reasonable time
5 to make an entry of this or does he not?

6 A Yes, sir, to close off the following business
7 day.

8 Q That's what I tried to get from you. Thank
9 you.

10 But there is no question that on September 2nd
11 at 6:30, you seized Government's Exhibit 71 which I hold
12 in my hand and which you do not find any entry of any record?

13 A When I looked at the piece and the amount of
14 work done on it, knowing what it is to disassemble all
15 that --

16 MR. LEFKOWITZ: I move to strike this out as
17 totally unresponsive.

18 THE COURT: Yes.

19 Answer the question.

20 Q All I asked you is, isn't it a fact that on
21 September 2nd when you seized Government's Exhibit 71 which
22 I hold in my hand you did not find then or now this to be
23 entered in any record?

24 A That's correct.

25 Q Now, isn't it a fact, Mr. Michaelson --

A No, to Mr. Linarillo's brother.

Q You gave him this receipt as representing the items of articles that you took from his store?

A I asked him to check if he wanted, yes, sir.

Q I didn't ask you that but I will accept it.

Now, will you look at item No. 50?

A Yes, sir.

Q What does it say?

A Books and records.

Q By that you were referring to the books and records that you have on your witness stand, right?

A That's correct.

Q Didn't occur to you to count the number of books that you took or did you count them?

A No, sir, I didn't.

Q How many books have you got there, eight,
is 's that true?

A Yes, sir, that's correct.

Q . Of those eight books one was brought to you last week. Isn't that true?

A I don't know for sure. I only took seven.

one is dated 10/22/76.

Q Now, do you know or don't you know, whether

Erickson-cross-Lefkowitz

391

1
2 you took eight books on September 2nd and not just those
3 seven books that you have before you excluding the one that
4 was added last week?

5 A No, I asked for all the bookd but I have no
6 knowledge of whether it comprised seven or eight.

7 Q When you entered the Government's Exhibit 42,
8 the receipt that you turned over to Mr. Linarillo's
9 brother, all that you put down was not the number of books
10 and records but just the phrase books and records?

11 A They were supposed to be complete, sir.

12 Q Isn't it a fact that when you take any
13 number of books you put down how many books you are taking?

14 A It would have been a better practice, yes,
15 sir.

16 Q But in any event, in this case it wasn't
17 done?

18 A It wasn't done in this case, no, sir.

19 Q Now, Mr. Erickson, first of all, besides your-
20 self, this was about 6:30 on September 2nd, is that correct?

21 A That's correct.

22 Q Besides yourself, how many other people from
23 government agencies were there with you, just a number.

24 A As part of the search team?

25 Okay, first as part of the search team.

Erickson-cross-Lefkowitz

396

1
2 Q These three Winchesters we have just discussed,
3 are these among these weapons here (indicating)?

4 A To the best of my recollection, there is not a
5 94 Winchester in there. I can verify that.

6 Q I wish you would.

7 THE COURT: When you say here, it is not clear.
8 You are talking about the rifles, the butt end of
9 which is sticking out of the carryall in the Courtroom?

10 THE WITNESS: I don't know. If I could refer
11 to my listing --

12 THE COURT: I don't know that there is a
13 correlation with what you have in your hand with the
14 barrel sticking out down there. Is there some
15 correlation between that list and what there is in the
16 Courtroom?

17 THE WITNESS: There should be.

18 THE COURT: Do you know?

19 THE WITNESS: I have a listing of what I took.
20 I assume the evidence was safeguarded and taken to the
Courtroom.

THE COURT: Have you looked at them since?

THE WITNESS: Not each one by number, no sir.

Q Now, in any event, the 94 Winchesters are not
in this Courtroom today?

1 in the business of being an artist. If you have a
2 legitimate business.

3 MR. LEFKOWITZ: But, your Honor, that touches on
4 something, for instance, whether an expenditure is
5 proper and necessary so it might be properly given
6 credit for deductions is strictly a civil matter, but
7 we are dealing here with a criminal matter.

8 THE COURT: For the purposes of describing the
9 activity, that's what we are talking about, a civil
10 definition. But we are engaged in the business of
11 doing something. The question of whether they prove
12 beyond a reasonable doubt that they were criminally
13 engaged in this business is something else again.

14 MR. LEFKOWITZ: The statute says engages in
15 business, definitions of terms, they didn't go into
16 what that is. And what we who are engaged in this
17 craft --

18 THE COURT: The jury has got to be satisfied
19 beyond a reasonable doubt that they were engaged in
20 business.

MR. LEFKOWITZ: Yes.

THE COURT: No doubt about it.

MR. LEFKOWITZ: I am arguing to the Court --

THE COURT: Prima facie there is enough to get
it to the jury on that question.

36a

1 receipt for distribution firearms, curios or relics.
2 In addition, before commencing the continuing fire-
3 arms business, each licensed dealer and licensed
4 collector shall inventory the firearms or collection
5 and shall record same in the record required by this
6 paragraph.

7 Now, the little references both in
8 the statutes and during the course of the case to
9 what a frame of references and it is defined in the
10 regulations as that part of a firearm that provides
11 housing, a hammer, breech or bolt and firing
12 mechanism and usually is threaded at its forward
13 position to receive its barrel.

14 The following are the essential
15 elements of the crime charged which must be proven
16 beyond a reasonable doubt:

17 One, that the defendant was a licensed
18 gun dealer;

19 Two, that the defendant failed to make
20 appropriate entries and properly maintain records
21 which he was required to keep as charged;

22 Three, that the defendant knowingly
23 failed to do so.

24 Now, the defendants, Pasquale and
25 Maria Piccirillo assert that they were victims of

1
2 So he goes down to the Fulton gun shop with the agents,
3 walks in by himself, gets two guns, brings them out,
4 gives them to the agents for \$380. On that occasion,
5 ladies and gentlemen, you will recall that most of the
6 agents observed Dominick Linarillo shake Pasquale
7 Piccirillo's hand just as he emerged from the Fulton
8 gun shop.

9 Finally, the Government introduced evidence of
10 a seizure on September 3rd of a large quantity of
11 rifles and hand guns which were not registered in
12 Mr. Linarillo's books and records.

13 Ladies and gentlemen, about this seizure, the
14 Government did not charge Mr. Linarillo with the
15 violation of these books and records because we wanted
16 to get him for a technical violation. The Government
17 indicted him on this count, ladies and gentlemen,
18 because the fact that Dominick Linarillo did not have
19 those guns in his books and records, I submit to you,
20 was proof that he was dealing it illegally. Why
21 didn't he have them in his books and records?
22 Because those were the guns he would deal illegally
23 with in the same way Carmine Marcogliano and Maria
24 and Pasquale Piccirillo. You can't deal illegally
25 with people and put it in the books and records.

M. Piccirillo - Cross/Appleby

740

stand and testified further through the interpreter as follows:

MR. APPLEBY: May I proceed?

THE COURT: Yes, please.

CROSS-EXAMINATION

BY MR. APPLEBY:

Q Ms. Piccirillo, it is your testimony, is it not, that you are a peaceful and law abiding citizen; is that correct?

A Yes.

Q And you have been so through your entire life?

A Yes.

Q And you have never caused violence to anybody, have you, is that your testimony?

A Never.

Q And is it your testimony that you would never have caused violence to anybody?

A Never.

Q Have you ever heard of a contract,

M. Piccirillo --

MR. SOLER: Objection, your Honor.

THE COURT: Overruled.

A No.

Do you know what a contract is?

M. Piccirillo - Cross/Appleby

741

1
2 A It is a contract.

3 Q Tell us what your understanding of a contract is,
4 please.

5 A I don't know contract.

6 Q You have never heard of the word contract?

7 A I am hearing the word contract, I have never done
8 a contract.

9 Q Tell us what your understanding of a contract is?
10 You just testified that you have never done a contract.

11 A A contract means for example if I bought my house,
12 I'd have a contract.

13 Q I am not talking about that kind of a contract,
14 Ms. Piccirillo --

15 MR. LEFKOWITZ: I object to that. He asked the
16 question, he got an answer.

17 THE COURT: Overruled. Sit down.

18 Q I am asking you about contracts with respect to
19 gangsters.

20 A I never met gangsters.

21 Q Have you ever heard of a contract in connection
22 with gangsters? Do you know what a contract is in that con-
23 text?

24 A I never met gangsters. I never had anything to
25 do with anybody.

M. Piccirillo - Cross/Appley

742

Q Ms. Piccirillo, have you ever hired anybody to cause violence to anybody?

A No, I never had anything to do with anybody.

Q I asked you a question, Ms. Piccirillo, have you ever hired anyone to cause violence to someone?

MR. SOMMA: Objection, your Honor.

THE COURT: Overruled.

MR. SOMMA: Your Honor --

THE COURT: Overruled.

MR. LEFKOWITZ: I move for the withdrawal of the jury.

THE COURT: Denied.

A Why, what did they do to me?

Q The simple question is, yes or no, did you ever hire anyone to cause violence to another human being, yes or no.

A No, never. I swear it, never.

Q Ms. Piccirillo, did you ever hire an individual to break somebody's legs?

MR. LEFKOWITZ: Objection.

THE COURT: Overruled.

MR. LEFKOWITZ: I move for the withdrawal of the jury.

THE COURT: Denied.

M. Piccirillo - Cross/Appleby

743

1 A Never.

2 Q Ms. Piccirillo, isn't it a fact that in the
3 spring of 1975, you had negotiations with an individual and you
4 asked that person to break somebody's legs; isn't that a fact?

5 MR. SOMMA: Objection.

6 THE COURT: Overruled.

7 A No, I didn't.

8 MR. APPLEBY: Excuse me.

9 Q Ms. Piccirillo, you stated that you do know this
10 individual Santorio; isn't that a fact?

11 A Yes, I do.

12 Q And did you have any discussions with Mr. Santorio
13 concerning a breaking of somebody's legs?

14 MR. SOMMA: Objection.

15 MR. LEFKOWITZ: Objection.

16 THE COURT: Overruled.

17 MR. LEFKOWITZ: I move for the withdrawal of the
18 jury.

19 THE COURT: Denied.

20 Q The question is, yes or no, Ms. Piccirillo, did
21 you have those discussions?

22 A I only saw Santorio two or three times in the
23 whole of my life in my house.

24 Q You don't recall any discussions whatsoever with
25

M. Piccirillo - Cross/Appleyby

744

anybody concerning a breaking of somebody's legs? You're asking that person to break somebody's legs?

A No, no.

Q Does this refresh your recollection, Ms. Piccirillo, there is a gentleman approximately five foot eleven --

MR. LEFKOWITZ: Objection.

Q -- a white male --

THE COURT: Overruled.

MR. LEFKOWITZ: A question was asked. The woman answered it. She didn't say she doesn't remember or needs any refreshment of recollection.

THE COURT: Overruled.

MR. LEFKOWITZ: I move for the withdrawal of the jury.

THE COURT: Denied.

Go ahead.

Q (continuing) -- five-eleven, white male, he has a medium build. Did you ever have a discussion with a person in that general description concerning the breaking of somebody's legs?

A I don't know anything about it.

MR. APPLEBY: No further questions.

THE COURT: You stated, I think, on direct

M. Piccirillo - Cross/Appleby

745

1
2 examination that the first time you ever met Mr. Santorio
3 was on May 13, 1975?

4 THE WITNESS: When they came to my house, that
5 was the first time I saw Santorio. I don't know which
6 date it was. It was the first time.

7 THE COURT: That was the first time?

8 Had you ever talked to him before that?

9 THE WITNESS: No, I swear I never saw this per-
10 son before in my house. I never knew him.

11 THE COURT: The question was, had you ever talked
12 to him before that?

13 THE WITNESS: No, never I talked to him.

14 THE COURT: All right.

15 CROSS-EXAMINATION

16 BY MR. LEFKOWITZ:

17 Q Ms. Piccirillo, I am only going to ask you a
18 couple of questions. You were in a courtroom here last week
19 and when Mr. Appleby, the Assistant United States Attorney
20 was questioning the Government witness, the agent by the name
21 of Sezima, Francesca, the interpreter was interpreting for
22 you. The questions were put to the witness; isn't that true?

23 A To me? My husband was hearing, I couldn't hear
24 very well.

25 Q Well, did you hear some of the questions that

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U. S. DISTRICT COURT E.D. N.Y.

44a

UNITED STATES OF AMERICA

-against-

DOMINICK LINARELLO,

Defendant.

★ JAN 17 1977 ★
JAN 17 1977
NOTICE OF APPEAL
76 Cr. 608

1. Name and address of Appellant: Dominick Linarello,
263 Arlington Avenue, Brooklyn, New York

2. Name and address of attorney: Jacob P. Lefkowitz,
150 Broadway, New York, New York.

3. Offenses: Appellant was convicted as follows:
Two Counts; one count which charged violation Sections 922
subdivision (a) subdivision (1), 923, 924 and 2 of Title 18
United States Code and one count which charged violation of
Sections 922(m) and 924 of Title 18 United States Code.

4. Concise Statement of Judgment: The judgment herein
was dated and entered January 13, 1977. By the terms of this
judgment the appellant was sentenced to serve a term of four
years on each count and the payment of a fine of \$5,000 on
each count. The term of imprisonment to run concurrently. The
term of fines to run consecutively, thus making a total fine of
\$10,000. Pursuant To Title 18 § 4205(b)(2)

5. The above-named appellant hereby appeals to the
United States Court of Appeals for the Second Circuit from the
above judgment.

Dated: New York, New York
January 13, 1977

JACOB-P. LEFKOWITZ
Attorney for Defendant
Dominick Linarello
150 Broadway
New York, N.Y. 10038
(212) 964-4845

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

Petitioner-Appellee,

-against-

DOMINICK LINARELLO,
PASQUALE PICCIRILLO
MARIA PICCIRILLO and
CARMINE MERCOGLIANO,

Defendant-Appellants.

:
: Index Number

:
: 77-1034

:
: AFFIDAVIT OF
: SERVICE BY
: MAIL

-----X
STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

BRIGID E. WHELAN, being duly sworn, deposes and says:

That I am not a party to this action, am over 18 years
of age; and reside at Woodside, New York.

That on the 12th day of April, 1977, I served the
within Brief for the Defendant-Appellant and Appendix upon
David G. Trager, United States Attorney, Eastern District of
New York, at 225 Cadman Plaza East, Brooklyn, New York, attorney
for the United States in this action, at the address designated
for that purpose by depositing a true copy of same enclosed in
a post-paid properly addressed envelope, in an official depository
under the exclusive care and custody of the United States Postal
Service within the State of New York.

Sworn to before me, this
12th day of April, 1977.

Brigid E. Whelan
BRIGID E. WHELAN

Harold J. [illegible] State of NY
Notary Public in NY County of [illegible] April 30, 1977

